DISTRIBUTION

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COPY PROTECTION

For some time, I have been concerned that both in the intellectual community, among academics, as well as with the general public we have been losing the war for men's minds, i.e., to convince people that copy protection is both necessary and a positive good. Our current arguments are based on two themes: (1) morality: stealing copyrighted works is wrong and (2) punishment: content providers will withhold their works if copy protection is not available. As to the former, most people follow the rule that "honesty is for the other fellow; stealing is bad only if you can't get away with it." As to the latter, most people don't believe we will withhold our product, but rather believe that for the right price, we will sell any product. Moreover, if all else fails, a compulsory license can always be imposed to force the copyright holder to release its product.

Below is an attempted argument to be utilized both in speeches and written presentations crafting the reasons for copyright protection in economic terms that I hope (since it is based on self-interest) will be more persuasive than our customary stance. I would appreciate your (a) views as to whether any of the statements are damaging to the Company, and (b) help in redrafting the paper so that the arguments will be sufficiently clear and persuasive. If you have any additional thoughts, statements or arguments, they would be greatly appreciated.

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It is customary to compare internet hackers and stealers of copyrighted works to Robin Hood and his Merry Men. For Hollywood, picture King John, his Norman Barons, and the Knights Templar,[1] all evil and greedy. The truth is that Hollywood provides a relatively costly form of entertainment at a relatively low price. It was created and remains a popular form of entertainment while many other forms of entertainment are limited to the wealthy. Compare the average price of a movie ticket with that for Broadway theater or most sporting events. Both are many times the average movie price. None of the concession [popcorn/soda] income goes to the producer/distributor. If motion picture producers are forced to recoup their costs on initial release, the result will be to drive up the ticket price so as to make theatrical pictures affordable ~~for only the very~~only for the wealthy.

[1] Some have argued that the reason central England did not develop at the same rate as southern England was because of of Robin Hood's predatory activities which made normal commerce impossible.

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Production of motion pictures is expensive. This is true whether the picture is that of a budding producer financing his or her costs on credit cards, or a major Hollywood studio (average film cost $52 million) before a penny is spent on distribution (add another $25 million). While no one weeps for Hollywood producers, it is generally admitted that the earnings of most film studios is in the single digit range and most films lose money on any accounting analysis.

If studio revenues are reduced, the amount of money available for production is reduced. Release in one market affects the income derived from ~~another market,~~ other markets, sometimes positively (theatrical releases support home video releases), sometimes negatively (a free TV release will negatively impact a Pay TV release). Thus, if a picture is shown on the internet, the audience in the downstream markets, i.e., those markets in which the picture has not yet been released, will be reduced by those who see the film in that medium. With less money carried to the bottom line, less money is available for production, with the result that pictures which could have been made, will not be made, and those that are made, will be less expensive. The end result is fewer jobs and reduced compensation for those involved in film production,[2] and greater risk, and less reward, for those who invest in such production. No one produces entertainment motion pictures to lose money.

A business person faced with a drop in revenues has two choices: Cut costs or increase prices. The first is the most obvious. Initially, the cuts will not be felt by $20 million actors or other high priced talent. They can open a film, bring in an audience, and thus will continue to command high salaries. Rather, like other industries, the cuts will be implemented by the elimination of character actors and supporting roles, reduction in the number and quality of special effects, and in the number of and compensation for the more than 150 people typically involved in the each picture's physical production -- set designers, carpenters, grips, electricians, etc.[3] Initially and ultimately, the quality of the film suffers. To a certain extent (other than the so-called "epic" films), this is already being done.

The other business alternative is to increase prices in those markets where copy protection can be maintained. The result will be the migration of entertainment production from a low cost popular media (e.g., theatrical films and free television) to those open only to the wealthy, institutions and the government -- the ultimate, a pre-Guttenberg world where knowledge and information are limited to the few. Not an attractive alternative except for those who really like to control information.

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[2] Pursuant to collective bargaining agreements, after theatrical release approximately 18 percent of gross receipts of each picture (off the top – before production costs are recovered) are paid as residuals to union employees.

[3] From 1992 to 1996 entertainment production (motion pictures, commercials) was the star of California's economic recovery. In 1996, the industry generated $27.5 billion in economic activity statewide. Total employment rose from 164,000 to 226,000, a 38% increase – seven times faster than the total California economy. Entertainment rank among the highest in the world. $53,000 average industry salary, 70% higher than average salaries statewide, and over 80% higher than average salaries nationwide